

REMARKS

No amendments are made herein.

The Telephone Interview

The undersigned appreciates the Examiner's clarification on August 20, 2010, that the claims of Group I are properly identified as claims 50 and 76, rather than 50-76. Accordingly, response is made on that basis.

The Requirement for Restriction under 35 U.S.C. 121 and 35 U.S.C. 372

The Patent Office has required restriction under 35 U.S.C. 121 and 35 U.S.C. 372, alleging that the claims represent three inventions as defined below:

- Group I Claim(s) 50 and 76, drawn to a therapeutic composition.
- Group II Claim(s) 51-60, drawn to a method for the treatment of a cancerous condition.
- Group III Claim(s) 61-75, drawn to a method for combination therapy of a disease condition.

The Patent Office has further alleged that the claims do not relate to a single general inventive concept under PCT Ryle 13.1 and 13.2 for lacking the same or corresponding technical features because claim 50 is said to be anticipated by Depui, US Patent 6,183,776. The cited patent is said to teach oral compositions comprising a proton pump inhibitor and an antacid (see Example, omeprazole and aluminum hydroxide/magnesium carbonate).

In addition, the Patent Office has determined there are seven aspects requiring an election of a particular species for examination: a proton pump inhibitor (claims 50-75), an antacid (claims 50, 56 and 73), a cancerous condition (claims 50-60, 66, and 76), a disease condition with specificity (claims 61-75), an anticancer drug (claims 50-60, 66 and 75), a further drug (claims 61-63, 65 and 75), and a HARRT drug (claim 70)

and requires an election of a species for initial examination. The non-elected species should be rejoined if a generic claim is found to be allowable.

In response to the requirement for restriction, Applicants elect the claims of Group II for examination with traverse. Applicants respectfully submit that the Examiner is incorrect in his characterization of Claims 51-60 versus Claims 61-75. As to the claims of Group II, the Examiner is correct that these relate to a cancerous condition. However, of the claims of Group III, claims 61-68 and 71-75 encompass methods of treating cancerous conditions, and claims 66-68 are obviously related to methods to be used in patients with cancerous conditions. In addition, many of the compounds listed in claim 64 are useful as cancer chemotherapeutic agents. Accordingly, at least certain of the claims of Group III should be rejoined with Group II if the restriction is between cancerous and noncancerous conditions. Applicants request that Group III, drawn to methods for patients with a non-cancerous condition, be set out as claims 61 (in-part and) 69-70.

As to the election of species, Applicants elect the following species for examination:

- A proton pump inhibitor: Omeprazole
- An antacid: Bicarbonate, for example calcium carbonate in its aqueous form
- A cancerous condition: Adenocarcinoma
- A further drug: anticancer drug Cisplatin

Claims which read on all the elected species are claims 51-58, 61-68 and 71-75.

Applicants respectfully note that claims 69 and 70 relate to disease conditions other than a cancer (present elected cancerous condition is adenocarcinoma). Accordingly, no election of a HAART drug is made at this time.

If further election is necessary, the courtesy of a telephone interview is respectfully requested.

Conclusion

In view of the foregoing, it is submitted that this case is in condition for allowance, and passage to issuance is respectfully requested.

If there are any outstanding issues related to patentability, the courtesy of a telephone interview is requested, and the Examiner is invited to call to arrange a mutually convenient time.

This Amendment is accompanied by a Petition for Extension of Time (two months) and payment of the fee of \$490.00 as required by 37 C.F.R 1.17. It is believed that the present amendment does not require the payment of any additional fees, pursuant to 37 C.F.R. 1.16-1.17. If this is incorrect, however, please charge any fees due under the foregoing Rules to Deposit Account No. 07-1969 and grant any additional extension of time, if needed.

Respectfully submitted,

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